TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 76.

ULYSSES S. G. WHITE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 15, 1900.

(18,588.)

(18,588.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 75.

ULYSSES S. G. WHITE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 19, 1903.

1 In the Court of Claims.

ULYSSES S. G. WHITE
v.
THE UNITED STATES. } No. 22495.

I.—*Petition.*

(Filed January 30, 1901.)

To the honorable the Court of Claims:

The claimant, Ulysses S. G. White, respectfully represents:

The claimant was on the 9th day of January, in the year 1877, appointed from civil life as a civil engineer in the navy.

By reason of prior service he was under the provisions of the acts of August 5, 1882, and March 3, 1883, 22 Stat. L. 287, 472, and 1 Supp. R. S. 401, allowed the maximum pay of his grade from May 19, 1885, and has since continued to receive the same.

By a portion of section 13 of the naval personnel act of March 3, 1899, 2 Supp. R. S. 973, it is provided as follows:

"That all officers, including warrant officers, who have been or may be appointed to the navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service."

Under this provision the claimant has become entitled to receive the maximum pay of his grade from the 19th day of May, 1880, instead of the 19th day of May, 1885 as well as to receive pay as of a higher longevity period from the date of appointment to the 19th day of May, 1880. The difference of pay thus due him is as shown by the following statement:

2 Amount of pay due under above-quoted provision:

3 years and 130 days at $3,000 per annum...	$10,068.49	
5 years at $3,500 per annum.....	17,500.00	
Total.....		$27,568.49
Amount of pay received:		
3 years and 130 days at $2,700 per annum.....	$9,061.64	
5 years at $3,000 per annum.....	15,000.00	
Total.		24,061.64
Balance due.....		$3,506.85

which amount he claims.

The claimant has made application to the accounting officers of the Treasury for the payment of this claim, but the auditor for the

Navy Department, under date of March 23, 1899, decided that he was not entitled to the same, and upon this construction being submitted to the Comptroller of the Treasury that officer, on the 21st day of April, 1899, affirmed the decision of the auditor.

No other action than as aforesaid has been had on this claim in Congress or by any of the departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims three thousand five hundred and six dollars and eighty-five cents ($3,506.85).

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

STATE OF OHIO, }
County of Brown, } *ss:*

Ulysses S. G. White, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

U. S. G. WHITE.

Subscribed and sworn to before me this 28th day of January, 1901.

[SEAL.] ROBERT E. CAMPBELL,
Probate Judge.

3 II.—*Traverse. Filed January* 28, 1902.

ULYSSES S. WHITE
v.
UNITED STATES. } No. 22495.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

4 III.—*Findings of Fact and Conclusions of Law. Filed March 31, 1902.*

This case having been considered by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant, Ulysses S. G. White, was on the 9th day of January, in the year 1887, appointed a civil engineer in the navy from civil life. He remained such civil engineer and was such at the time of the passage of the navy personnel act of March 3, 1899.

II.

The claimant, by reason of services in the army, amounting to six years seven months and twenty-one days, previous to his entry into the navy, reached the maximum pay of his grade, $3,500, May 19, 1885, under Revised Statutes, sections 1478, 1556. Thus the amount of pay received by him between the 9th of January, 1877, and the 19th of May, 1885, was as follows:

Three years and 130 days, at $2,700 per annum	$9,061.64
Five years at $3,000 per annum	15,000.00
Total	24,061.64

If he were, upon the date of his appointment, credited for computing his pay with five years' service, and entitled to be paid from that date, he would receive pay at the following rates:

Three years and 130 days, at $3,000 per annum	$10,068.49
Five years, at $3,500 per annum	17,500.00
Total	27,568.49

or $3,506.85 more than he has previously received.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover, and his petition is dismissed.

5 IV.—*Opinion of the Court.*

PEELLE, *J.*, delivered the opinion of the court:

The question in this case is the same which was involved in the Royce case, decided adversely to claimant at the present term of court (37 C. Cls. R., —), and but for the earnestness and ability with

which the claimant's counsel contends that the court erred in applying the rules it did in the interpretation of the statute, upon which the claimant bases his right to recover, we should let this case follow the Royce case without comment.

The statute referred to is section 13 of the act of March 3, 1899 (30 Stat. L., 1004, 1007), and reads as follows:

"That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army: *Provided*, That such officers when on shore duty shall receive the allowances, but fifteen per centum less pay than when on sea duty; but this provision shall not apply to warrant officers commissioned under section twelve of this act: *Provided further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the army detailed for duty in similar places: *Provided further*, That naval chaplains who do not possess relative rank shall have the rank of lieutenant in the navy; and that all officers, including warrant officers, who have been or may be appointed to the navy from civil life shall, on the day of appointment, be credited, for computing their pay, with five years' service. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: *And provided further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law: *And provided further*, That nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the navy."

The claimant grounds his right to recover the difference between the pay he received under Revised Statutes, section 1556, during his first five years' service, and the amount he now claims, under the third proviso to the act quoted.

In the construction of that proviso, in connection with the section and the purpose of the act as we conceive it, the court in the Royce case reached the conclusion that the words "after June thirtieth, eighteen hundred and ninety-nine," were intended by the Congress to apply to all the officers mentioned in the section.

But in the Royce case, as in this, the claimant was receiving his maximum pay long before the act was passed, and so whether the claimant's rights became consummate upon the approval of the act or after June 30, 1899, is immaterial in this case.

In reaching the conclusion in that case, we did not intend to depart from the well-known rule of interpretation that the province of the court "is to declare what the law is, and not, under the guise of

6 interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such." (*Dewey v. United States*, 178 U. S., 521.)

We endeavored to follow the meaning of the language in the setting which the Congress gave—*i, e.*, to construe the proviso not independently of the purpose of the act, or of the section of which it forms a part, but in connection therewith—and while the construction we gave, if sustained, will operate to give increased pay to all officers of the navy appointed from civil life who were not receiving their maximum pay on June 30, 1899, it will exclude those who were receiving their maximum pay on that date.

Had the proviso omitted the words "who have been," then only those thereafter appointed would have been entitled to the increased pay, while those appointed less than five years prior thereto would have received less pay than those thereafter appointed.

The words, we think, are satisfied by construing them as applying to all those officers theretofore appointed from civil life who were not on June 30, 1899, receiving their maximum pay, and this, we still think, was the purpose and intent of the Congress, and this conclusion we reached, not as counsel say, by "rules of interpretation based on considerations outside the terms of the statute," but from the language used in connection with the whole section and evident purpose of the act.

The subject-matter of the proviso in question pertains to the rank of chaplains and to the basis for computing the pay of "all officers, including warrant officers, who have been or may be appointed to the navy from civil life;" and the purview or body of the section refers to the pay of "commissioned officers of the line of the navy and of the medical and pay corps," many of whom—nearly all from the medical corps—were appointed from civil life, while the chaplains, the majority of the professors of mathematics, nearly all the civil engineers, and other officers were appointed from civil life.

So that the language of the proviso "all officers * * * who have been or may be appointed to the navy from civil life" clearly includes those officers mentioned in the body of the section who were appointed from civil life.

If, therefore, the claimant's contention should prevail, those officers so appointed whose pay was increased after June 30, 1899, by assimilation to army pay, would, in addition thereto, be entitled to receive from the date of appointment a gratuity of five years' additional pay, thereby fixing in the same section two distinct dates for the beginning of the pay of the same officers. We can not believe that the Congress so intended.

The purpose of the act as expressed in the title thereto is "An act to reorganize and increase the efficiency of the personnel of the navy and Marine Corps of the United States;" and while the body of an act can not be controlled or restrained by the title, it may be referred to in connection with the language of the act to as-

certain the meaning of the statute where the language is susceptible of different constructions. (*Church v. United States*, 143 U. S., 457–462.)

It can hardly be contended that the payment of a gratuity has anything to do with the reorganization or the increase of the efficiency of the personnel of the navy.

An analysis of the statute shows that the purposes were to transfer the officers constituting the Engineer Corps to the line of the
7 navy, defining their duties and how they shall take rank; defining the active list of the line of the navy, retirement of officers, the pay of the officers of the line and of the medical and pay corps; fixing the basis for the payment of officers appointed from civil life; repealing the prize and bounty laws; fixing the term of enlistment of enlisted men; providing for their retirement; defining the active list of the line officers of the Marine Corps and how vacancies therein shall be filled, and what officers shall constitute the staff, etc., and repealing all acts in conflict therewith.

We must presume that the Congress were familiar with the rules relating to the construction of statutes; and in this connection the first thing to notice is that the presumption is against retrospective legislation. It is not looked upon with favor and should not be applied where the language used is susceptible of another meaning. (Southerland on Statutory Construction, sec. 463 *et seq.;* Endlich on the Interpretation of Statutes, sec. 210 *et seq.*)

Or, as we said in the Royce case, "Even though the language used would seem upon other principles of interpretation to require retroactive construction, yet in the absence of a clearly expressed intent to the contrary the presumption is against it." (Endlich on the Interpretation of Statutes, sec. 272 *et seq.*)

In the case of *Murray v. Gibson* (15 How., 422–423), concerning the construction of a statute in Mississippi limiting suits on judgments recovered out of that State, holding that such statute did not apply to judgments recovered before its passage, the court said: "As a general rule, for the interpretation of statutes, it may be laid down that they never should be allowed a retroactive operation where this is not required by express command or by necessary or inevitable implication. Without such command or implication they speak and operate upon the future only." *Harvey v. Tyler* (2 Wall., 328–347); *United States v. Alexander* (12 Wall., 177–179); *Twenty Per Cent. Cases* (20 Wall., 179–187), and *United States v. Moore* (95 U. S., 760–763).

In the case of *United States v. Burr* (159 U. S., 78–87), involving the construction of section 1 of the tariff act of 1894, which took effect August 28, 1894, providing that on and after the 1st day of August, 1894, there *shall* be levied, collected, and paid upon articles imported from foreign countries the rates of duties therein prescribed, the court, in the construction of that section, and the similar language in section 2, as to what articles shall be exempt from duty, held that "in our judgment the word 'shall' spoke for the future and was not

intended to apply to transactions completed when the act became a law."

In the case of *United States v. Moore* (*supra*) the court says: "A thing may be within the letter of the statute and not within its meaning; and it may be within the meaning though not within the letter."

And so in the present case, while the words of the third proviso of section 13 standing alone might justify the construction for which the claimant contends, yet considering the purpose of the act and the language of the section of which the proviso is a part, we think the meaning is that after June 30, 1899, "all officers, including warrant officers, who have been or may be appointed to the navy from civil life shall, on the day of appointment, be credited, for computing their pay, with five years' service," thereby fixing the beginning of the pay of all officers so appointed after June 30, 1899.

For the reasons we have given the petition is dismissed.

8 V.—*Dissenting Opinion.*

WELDON, *J.*, dissents:

I do not concur in the result reached by the court in this case, and express the reasons of my dissent briefly:

It is said in the second clause of finding II that "if he were, upon the date of his appointment, credited, for computing his pay, with five years' service, and entitled to be paid from that date, he would receive pay at the following rates:

Three years and 130 days, at $2,700 per annum.....	$10,068.49
Five years, at $3,500 per annum.....	17,500.00
Total.....	27,568.49

or $3,506.85 more than he previously received."

The statute upon which the claimant bases his right to recover, and which is quoted at length in the opinion of the court, is in the third proviso, as follows: "*Provided, further*, That naval chaplains who do not possess relative rank shall have the rank of lieutenant in the navy; and that all officers, including warrant officers, who have been or may be appointed to the navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service." The words of this proviso are a clear and unequivocal declaration, upon which is based the right of the claimant. They need no interpretation or construction, and are a plain indication by apt and unambiguous words as to the measure of pay.

In the case of *Dewey v. The United States*, in the Supreme Court and in this court the rule of judicial authority in the application of a statute is stated, and applying the law of that case to this case warrants, in my opinion, the allowance of the claim of the plaintiff, as indicated in the second paragraph of finding II. *Dewey v. United States* (178 U. S., 521); *Dewey v. United States* (35 C. Cls. R., 172).

While retrospective legislation is not to be presumed, the words employed by the legislature must be given their ordinary and logical effect. The intent of the legislature "appears by an unavoidable implication," and fulfills the strict rule as to retroactive operation prescribed by Mr. Justice Miller in the case of *Schench v. Peay* (1 Woolworth's Rep., 175). As is quoted in the case of *Jaeger v. The United States* (27 C. Cls. R., 278), "the clearest guide to the meaning of a statute is the statute itself. If words are plain there is no room for construction or an interpretation." For these brief reasons I dissent from the conclusion reached in this case.

9 VI.—*Judgment of the Court.*

ULYSSES S. G. WHITE
v.
THE UNITED STATES. } No. 22495.

At a Court of Claims held in the city of Washington on the 31st day of March, 1902, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants, and do order, adjudge, and decree that the petition of the claimant, Ulysses S. G. White, be dismissed.

BY THE COURT.

VII.—*Application for and Allowance of Appeal.*

ULYSSES S. G. WHITE
v.
THE UNITED STATES. } No. 22495.

Now comes the claimant, Ulysses S. G. White, and appeals to the Supreme Court of the United States from the judgment of this court, entered on the 31st day of March, 1902, dismissing his petition, and moves for an allowance of this appeal.

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

Filed June 4, 1902.
Ordered that this appeal be allowed as prayed for.

BY THE COURT.

June 4, 1902.

10 Court of Claims.

ULYSSES S. G. WHITE
v.
THE UNITED STATES. } No. 22495.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the opinion of the court, of the dissenting opinion, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof, I hereunto set my hand and affix the seal of said Court of Claims, this 11th day of June, 1902.

JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

Endorsed on cover: File No. 18,588. Court of Claims. Term No. 75. Ulysses S. G. White, appellant, *vs.* The United States. Filed June 17", 1902.

OCTOBER TERM, 1870.

ULYSSES S. C. WHITE,
Appellant,
v.
THE UNITED STATES.
No. 75.

APPEAL FROM COURT OF CLAIMS.

BRIEF AND ARGUMENT FOR APPELLANT.

GEORGE A. KING,
WILLIAM B. KING,
Attorneys for Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

ULYSSES S. G. WHITE, *Appellant*,
v.
THE UNITED STATES.
No. 75.

APPEAL FROM THE COURT OF CLAIMS.

Statement of the Case.

The claimant sued in the Court of Claims to recover from the United States additional pay which he claims to be due him under that portion of the Navy Personnel Act of March 3, 1899, section 13 (30 Stat. L., 1007), reading as follows:

"That all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service."

The claimant was on January 9, 1877, appointed a civil engineer in the Navy from civil life. He had before that served in the Army six years, seven months and twenty-one days.

The pay of civil engineers of the Navy is fixed by section 1556 of the Revised Statutes, as follows:

"The commissioned officers and warrant officers on the active list of the Navy of the United States, * * * shall be entitled to receive annual pay at the rates herein stated after their respective designations:

* * * * * * * *

Professors of mathematics and civil engineers,

during the first five years after date of appointment,

when on duty..... $2,400;
on leave, or waiting orders..... 1,500;

during the second five years after such date,

when on duty..... $2,700;
on leave, or waiting orders..... 1,800;

during the third five years after such date,

when on duty..... $3,000;
on leave, or waiting orders..... 2,100;

after fifteen years from such date,

when on duty..... $3,500;
on leave, or waiting orders..... 2,600."

This statute creates graduated pay based upon longevity, the annual pay of a civil engineer increasing in strict accordance with the number of years of service.

He would have reached his maximum pay if his service in the Navy had alone been counted, on January 9, 1892. But by reason of credit for prior service in the Army (Finding II, p. 3), under the Act of March 3, 1883 (22 Stat. L., 473), he reached his maximum pay on May 19, 1885, after serving fifteen years in both Army and Navy.

He now claims under the proviso quoted from the Act of 1899, to be entitled to a credit of five years on date of appointment. Computing his pay upon this credit would cause him to reach his maximum on May 19, 1880, instead of May 19, 1885, and thus result in an increase of pay for every year from his appointment until May 19, 1895.

He has received $24,061.64 pay from January 9, 1877, to May 19, 1885. If he is credited with five years' service on date of appointment as provided in the Act of 1899, upon computing his pay with that credit, the total pay for that period would be $27,568.49, a difference of $3,506.85, which he claims.

The Court of Claims holds that the operation of this proviso is prospective only, and that it applies only to pay accruing after June 30, 1899. We maintain that the plain meaning of its words requires a retrospective as well as a prospective construction.

Assignment of Error.

For error in the judgment of the Court of Claims dismissing his petition, the claimant assigns that the Court of Claims erred in not computing his pay, after giving him credit for five years' service on date of appointment as required by the Act of March 3, 1899, section 13, and in not rendering judgment in his favor for the amount thus found due him.

Argument.

The Statute.

Section 13 of the Act of March 3, 1899 (30 Stat. L., 1007), contains the clause on which the present claim is based. The section is printed in full on page 4 of the record, as it appears in the Statutes at Large, but for convenience of reading we separate it into what we consider its constituent clauses, with separate headings, as follows:

OPENING CLAUSE—Pay of Commissioned Officers of the Line, Medical and Pay Corps.

"That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army;

1st PROVISO—Shore Pay of Such Officers.

"*Provided*, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty;

EXCEPTION TO FIRST PROVISO—Warrant Officers Commissioned, Excepted.

"but this provision shall not apply to warrant officers commissioned under section twelve of this Act;

2d PROVISO—Naval Officers on Shore Duty Beyond Seas to Have Full Pay.

"*Provided Further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the Army detailed for duty in similar places:

3d PROVISO, First Clause—Chaplains to Have Rank.

"*Provided Further*, That naval chaplains, who do not possess relative rank, shall have the rank of lieutenant in the Navy;

3d PROVISO, Second Clause—All Officers Appointed from Civil Life to Have Credit.

"and that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service.

3d PROVISO, Third Clause—Distribution of Prize Money abolished.

"And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed;

4th PROVISO—Present Pay Not Reduced.

"*And Provided Further*, That no provision of this Act shall operate to reduce the present pay of any commis-

sioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law;

5th PROVISO—Retired Officers Not Affected.

"*And Provided Further*, That nothing in this Act shall operate to increase or reduce the pay of any officer now on the retired list of the Navy."

The clause here relied on is the second clause of the third proviso as follows:

"And that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service."

The Natural Meaning of the Words.

Approaching this clause with the sole purpose to find its normal meaning from its terms, we analyze and define it as follows:

"All officers"—this is a comprehensive term to be limited only by the subsequent qualifying words. "Who have been or may be appointed to the Navy"—these words make the same grant to officers whose appointments have been made as to those yet to come. "From civil life" this completes the limitations on the subject, "All officers" and accurately describes this claimant. "Shall on the date of appointment"—this fixes the date when the credit takes effect. "Be credited for computing their pay"—not for rank or retirement, but for pay—not pay for any particular period, but pay in general consequent upon the credit newly applied. "With five years' service"—or, that, for computing his pay, this officer shall be treated as if he had been appointed five years before his actual appointment.

Finding II (p. 3) says:

"If he were, upon the date of his appointment, credited for computing his pay with five years' service, and entitled to be paid from that date, he would receive pay at the following rates:

Three years and 130 days, at $3,000 per annum.	$10,068.49
Five years, at $3,500 per annum.....	17,500.00
Total.....	$27,568.49

or $3,506 85 more than he has previously received."

This is doing exactly what the statute says shall be done. The Court of Claims, in framing the finding of fact, uses the very language of the statute. It expressly says that if what the statute requires is done the claimant will receive what he claims. Thus the plain language of the statute requires the very thing to be done which results in the right to the pay here claimed.

A farther analysis of four phrases in the act makes the meaning still clearer.

(1.) "All officers." If the intent of Congress was not to give a grant to the entire class, the word "officers" alone would have sufficed. The word "all" expresses the entire class described. Its object is to give the credit in every instance to officers appointed from civil life. There are to be no exceptions. The construction which the Court of Claims has placed upon the act would substitute for the words "all officers" the limitation "officers appointed from civil life, still in their original rank who have not yet reached their maximum pay in that rank." A construction which thus transforms the terms of a statute is necessarily unsound.

(2.) Equally significant are the words "who have been or may be appointed." It is true that a few officers already in the service had not yet reached the highest rate of pay in their lowest grades on March 3, 1899, and would thereby become entitled to an increase of future pay by reason of this phrase, even if prospective only; yet when considered in connection with the words "all officers," the words have a far wider significance. Not only are all officers who may be appointed from civil life to have this credit, but "all officers who have been appointed."

To reach the limited meaning ascribed by the Court of Claims to the words "have been appointed" should be added "so recently that they have not yet reached the maximum pay in their lowest grade;" or from the clause the words "who have been or may be" should be subtracted so as to read, "officers appointed." Even then the words would not wholly exclude a past meaning. No rule of statutory interpretation permits such alteration of plain words, complete in themselves. The broad words are inept for a meaning narrowed to the purpose declared in the opinion in this case.

(3.) "On the date of appointment." These words alone are conclusive. The credit takes effect on the date of appointment, neither before nor after; and the consequences of that credit all follow from that date. The words are of exact limitation. On the one hand they forbid the view that pay is given for the constructive service credited before the date of appointment; on the other they direct that the effect of the credit shall not be postponed until some period after the date of appointment. The credit being given, the pay follows by operation of law.

(4.) "For computing their pay." An increase in length of service may produce three consequences in the Navy, as is said in *Hawkins* v. *United States*, 19 C. Cls., 618:

"1. Higher rank resulting from greater length of service;
"2. Earlier period of retirement on the officer's own application after forty years' service, as authorized by section 1443 of the Revised Statutes; and
"3. Increase of pay."

The words here used forbid any change of rank; forbid the use of constructive service in calculating the length of service for retirement, and grant the benefit of that service for computing pay. They are of exact meaning. The word "pay" is not qualified. It is all pay computed upon the credit thus given. The opposite construction re-

quires words to be introduced to limit the pay to be computed to "pay hereafter accruing," or "pay for future service." The claimant's construction says that the credit of service given "on the date of appointment" is to produce the consequence "in computing their pay" which the law grants to such prior service, namely, increased pay from the date of appointment.

The dissenting opinion in this case says (Rec. 7), of these words:

"The words of this proviso are a clear and unequivocal declaration, upon which is based the right of the claimant. They need no interpretation or construction, and are a plain indication by apt and unambiguous words as to the measure of pay."

* * * * * *

"As is quoted in the case of *Jaeger* v. *The United States*, (27 C. Cls., R. 278), 'The clearest guide to the meaning of a statute is the statute itself. If words are plain there is no room for construction or an interpretation.' For these brief reasons I dissent from the conclusion reached in this case."

We rest our case upon this position so stated and regard the remainder of this brief as either only illustrative of it or responsive to the position of the court below.

Authorities Supporting Literal Interpretation.

The principle here claimed has had no recent stronger application than in the case of *Dewey* v. *United States*, 178 U. S., 510. That was a claim for bounty for destruction of enemy vessels. The obvious purpose of the law was to encourage personal gallantry and enterprise (as the dissenting opinion pointed out), by giving a double reward for overcoming a superior force. But the Court held that the words of the statute did not permit an opposing land force to be counted in the comparison and gave only the single reward for a victory over a superior force made up

of land and sea defenses. The decision was rested in the opinion on the principle claimed in this case (pp. 520, 521):

"Of course, our duty is to give effect to the will of Congress touching this matter. But we must ascertain that will from the words Congress has chosen to employ, interpreting such words according to their ordinary meaning as well as in the light of all the circumstances that may fairly be regarded as having been within the knowledge of the legislative branch of the Government at the time it acted on the subject. There is undoubtedly force in the suggestion that in rewarding officers and sailors who have sunk or destroyed the enemy's vessels in a naval engagement it is not unreasonable that all the difficulties, of every kind, with which they were actually confronted when engaging the enemy should be taken into consideration. But that was a matter which we cannot suppose was overlooked by Congress."

"Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such. Here the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress, as thus plainly expressed."

This was an extreme case, and the court fully accepted the doctrine that statutes are to be understood in the plain meaning of their words, and not construed by presumptions drawn from their consequences. This is made clear by the forcible statement in the dissenting opinion of the principle overruled by the decision of the court (p. 524):

"Undoubtedly it is our duty to give effect to the will of Congress, but in ascertaining its will the object Congress manifestly sought to attain must be recognized, and should be controlling, unless positively defeated by the language used."

The principle governing the Dewey case requires here that the statute be read in its plain meaning and that the result of "computing his pay" upon the credit given him by the statute be awarded to this officer.

The principle was well stated in *Sturges* v. *Crowinshield*, 4 Wheat., 122,202:

"If, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case, would be so monstrous that all mankind would, without hesitation, unite in rejecting the application."

The same principle is plainly stated in *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S., p. 36:

"In our judgment, the language used is so plain and unambiguous that a refusal to recognize its natural, obvious meaning would be justly regarded as indicating a purpose to change the law by judicial action based upon some supposed policy of Congress. But, as declared in *Hadden* v. *Collector*, 5 Wall., 107, 111, 'what is termed the policy of the Government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of the statutes."

The same thing was said in a somewhat different way in *McCluskey* v. *Cromwell*, 11 N. Y., 593, 601:

"Statutes and contracts should be read and understood according to the natural and most obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending their operation. Courts cannot correct supposed errors, omissions or defects in legislation, or vary, by construction, the contracts of parties. The object of interpretation is to bring sense out of the words used, and not to bring a sense into them."

The change in the point of view from which courts in recent years regard statutes, as illustrated by the cases cited, is philosophically stated by a recent writer (Black on Interpretation of Laws, Preface, p. iii).

"In dealing with these authorities, it has been impossible to overlook the great change which has come over the disposition of the courts with reference to their office as interpreters of the law. It is no longer assumed to be the province of the judiciary either to quibble away or to evade the mandates of the legislature. On the contrary, the modern authorities recognize only one rule as absolutely unvarying, namely, to seek out and enforce the actual meaning and will of the law-making power. Thus, the doctrine of 'equitable' interpretation has become obsolete, the sanctity of the common law is no longer so jealously insisted upon, and the difference between strict and liberal construction has been reduced to a minimum."

A Similar Statute.

A series of cases decided in this Court and the Court of Claims under an earlier statute affecting naval pay affords controlling precedents for this case. That related also to credit for prior service on date of appointment and is as follows, Act of March 3, 1883, 22 Stat. L., 473:

"And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the Regular or Volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the Regular Navy in the lowest grade having graduated pay held by such officer since last entering the service; *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided Further*, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the Volunteer Army or Navy."

The first case under this statute was that of *Hawkins* v. *United States*, 19 C. Cls., 611. The claimant asked the benefit of his prior volunteer service in computing his pay upon entering the Regular Navy in 1870. The Court recognized both the retroactive and the gratuitous nature of the construction claimed and held it sound because the terms of the statute justified it. The opinion says (p. 6, 17):

"The claimant contends that this clause is retroactive in its operation, and has the same effect in bestowing benefits on him, as if it had been in operation before he entered the Regular Navy; and that one of those benefits was to allow him, from the time he was appointed boatswain, a higher rate of pay than, by the Navy pay table, he would be entitled to, if his pay were computed from the date of his appointment to that office.

"On the other hand, the defendants insist on the well-understood rule that, as a general proposition, every law must be held to be only prospective in its operation; and that no law should be held to be retroactive, unless the intent to make it so be clearly manifested by its terms.

"Conceding this, we think it manifest on the face of the clause that it was meant to be retroactive; and it is not for the Government to object to the character which itself has given to its own legislative grant of benefits to own officers. It is, we think, quite impossible for the claimant to 'receive *all* the benefits * * * in *all* respects,' which the clause intends him to receive, if the clause should be held to be prospective only in its operation."

It is to be noted particularly that the Act of 1883 has one important difference from the Act of 1899. The Act of 1899 frankly avows its object to be increased pay; in the Act of 1883, the very grant of pay did not appear on the face of the statute. When the Court of Claims reached the conclusion that increase of pay was within its contemplation at all, there was no difficulty in deciding that the increase was for both past and future years. Here we need ask the latter conclusion only; the former is declared beyond controversy.

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This case was followed by a number in this Court. In *United States* v. *Rockwell*, 120 U. S., 60, the question presented was in what grade the officer should receive the credit for his voluntary service. The Court found the claimant entitled to retrospective credit and to a re-examination of his pay in the grade which he held on July 1, 1870. A similar question occurred in *United States* v. *Green*, 138 U. S., 293, and retrospective credit was given on the same basis.

In *United States* v. *Dunn*, 120 U. S., 250, the question was whether retrospective credit should be allowed for service in the Marine Corps, and it was held that it must be allowed. In *United States* v. *Hendee*, 124 U. S., 309, similar retrospective credit was allowed for service as paymaster's clerk. In *Brown* v. *United States*, 32 C. Cls., 379, it was held that service as a civil engineer in the Navy warranted credit under this statute.

In *United States* v. *Mullan*, 123 U. S., 186, credit was given for continuous service in the Regular Navy as if rendered in the grade held by the officer when graduated pay was given by the Act of July 15, 1870 (16 Stat. L., 330). He was allowed an increase of pay during the time when he held the rank of lieutenant-commander to which he would not have been entitled under any previous law. In *United States* v. *Baker*, 125 U. S., 646, the officer was allowed credit for his service in the Naval Academy and his pay as ensign consequently increased to exceed what was due him while he served as ensign.

The gratuitous character of the back pay granted by this Act of 1883 is evident upon examination of all these cases. These officers had received every cent to which they were entitled under the laws existing when they were in service; yet it was held that Congress by this act, in spite of the complexity of its form and the obscurity of its reference to pay, made a gift of back pay to all these

officers. How fortuitous was this grant is seen by the reported cases showing the following amounts allowed to different officers based upon their previous service:

Hawkins v. *United States*, 19 Cls., 611.....	$2,184.63
Jordan v. *United States*, 19 C. Cls., 621	1,004.86
Dunn v. *United States*, 21 C. Cls., 20; 120 U. S., 251	2,238.10
Rockwell v. *United States*, 21 C. Cls., 332; 120 U. S., 60.....	691.60
Mullan v. *United States*, 123 U. S., 186.....	356.03
Hendee v. *United States*, 22 C. Cls., 134; 124 U. S., 312.....	8,178.01
Baker v. *United States*, 23 C. Cls., 181; 125 U. S, 646.....	836.71
Green v. *United States*, 25 C. Cls., 300; 138 U. S., 298.....	4.17
Brown v. *United States*, 32 C. Cls., 379.....	13,879.56

In the Green case the Court of Claims held him entitled to $796.08, but this court allowed only $4.17, although it was conceded that if he had been commissioned four days earlier, the judgment of the Court of Claims would have been correct. The gift was absolutely arbitrary, but the courts sustained it because Congress gave it in terms which plainly meant it, when the subject-matter was understood.

It could be said of that statute, as is said of this by the Court of Claims, that a prospective operation could have been given to it without its granting back pay. In this very case the claimant received increased pay from the date of the act, March 3, 1883, to May 19, 1885, as well as back pay. The parallel of these two acts is complete; and the same principle which was followed in the cases under the Act of 1883, if followed in the present case, must result in a reversal of the decision of the Court of Claims.

The Reason for the Act.

We do not assume the responsibility of saying why Congress passed this act; it is not necessary to do so; a search

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for legislative motives is not requisite in the presence of plain words.

A court called upon to consider an act, need not understand the reason for the passage of the act, though it is gratifying to find these evident. If the terms of the act are ambiguous, then a search for a theory may be permitted in order to settle the ambiguity. But without ambiguity of expression, an interpretation based on a supposed theory of legislation rather than on the intent as expressed in the words, oversteps the boundaries between the legislative and the judicial province.

An explanation may be suggested. Under the Act of March 3, 1883, construed in the Hawkins case, officers appointed to the Navy from the Naval Academy received, and now receive, credit for computing their pay for their six years of service there at the expense of the Government. (*United States* v. *Baker*, 125 U. S., 646). Ever since that date, when commissioned they have received credit in computing their pay as if that time had been served in their lowest commissioned grade. By the Act of 1883, this principle was extended backward as well as forward. In the case cited Baker received an increase of back pay calculated upon the entire length of his preceding naval service in the Naval Academy. Officers spending an equal time at their own expense in professional education for the Medical Corps or the Corps of Civil Engineers or professors of mathematics or chaplains have begun their service in the lowest grade, with no such credit. They have complained that they should have a like credit for their years of preparation. Congress in this clause admitted the justice of this complaint and did for them what had been done for the Annapolis graduates in 1883. It was done in just the same manner, by a provision which is retrospective as well as prospective. It not only cures the inequality for future, but also corrects the past injustice. Thus this pro-

vision is an extension of the Act of March 3, 1883, to officers appointed from civil life and forms a part of the system established by that act.

The purpose of the system of longevity pay is stated by the Court of Claims, in *Thornley* v. *United States*, 18 C. Cls., 117, to be "to compensate for increased professional knowledge and efficiency in officers by increasing their pay in advance of promotion." Congress has in this provision declared that the professional education of officers appointed from civil life is equivalent in the increase of "professional knowledge and efficiency" to the experience gained by other officers in the Military Academy or in the enlisted ranks of the Navy or Army. It is admitted that this extension of the principle of longevity pay has been made for the future. The only question here is whether it was made retroactive by the terms used in this statute.

The Position of the Court Below.

The opinion of the majority below admits (p. 7) that the words of this proviso, standing alone, "might justify the construction for which the claimant contends."

The Court was unwilling to adopt this construction. An analysis of the opinion in this case and the earlier one in *Royce* v. *United States*, 36 C. Cls., 328, to the same effect, shows that they hold that:

1. The construction makes the act retroactive.
2. The construction results in a gratuity.
3. The construction fails to give effect to the date, June 30, 1899, contained in the opening clause of this section.

In order to support its construction of the statute, the Court in Royce case announced this extreme rule (36 C. Cls., 337):

"True, the Congress have the authority to enact such [retroactive] laws, but in doing so they must use language that will admit of no other meaning."

In the opinion in this case, a somewhat milder form of statement is used (p. 6):

"Retrospective legislation * * * is not looked upon with favor and should not be applied where the language used is susceptible of another meaning."

This means that the Court of Claims, to find the meaning of this statute, asked first the question: Are these words susceptible of another meaning than giving back pay? The first question in the interpretation of a statute is: What is the natural meaning of the words used? The error here is in considering the former question before the latter is asked and answered. The rule is as old as Vattel that "it is not permitted to interpret what has no need of interpretation." The terms of this statute have one plain meaning, entirely clear, as soon as the subject-matter is understood. No question is proper here except to ask "What is the natural meaning of the words used?" since that question is clearly answered by the terms of the statute.

The Rule Against Retroactive Legislation.

The Court of Claims in discussing retroactive interpretation of statutes has extended the application of a well-known principle beyond its reason. Black, Interpretation of Laws, states it (p. 256):

"When the effect of giving to a statute a retrospective construction would be to make it destroy or impair vested rights, or impose new penalties, forfeitures, liabilities, or disabilities, such construction will be avoided, and the statute will be held to apply to future acts and cases only, provided that this can be done by any reasonable interpretation of the language used by the legislature."

This is a more accurate statement of the limits on the rule relating to retrospective interpretations than that based on Sedgwick, quoted from the opinion of the court

below. In all the cases on this subject, this is the only ground on which any presumption exists against a retroactive construction. The rule is thus stated in *Ex Parte* Buckley, 53 Ala., 42:

"Retrospective statutes, when within legislative competency, are not favored, and it is a sound rule of judicial construction that they shall operate prospectively only, unless the terms show a clear legislative intent that they shall operate retrospectively. Cooley's Const. Lim., 369; Sedgwick on Statutes and Constitutional Law, 161. The statutes excluded from judicial favor and subjected to this strictness of judicial construction, statutes which may be properly denominated retrospective, are such as take away or impair vested rights, acquired under existing laws or create a new obligation, impose a new duty or attach a new disability in respect to transactions or considerations already past. *Society, etc.*, v. *Wheeler*, 2 Gall., 139. Such statutes are offensive to the principles of sound and just legislation, and it is of these the authorities to which we have been referred use the term "odious" and other epithets expressive of judicial opprobrium."

In *Hine* v. *Pomeroy*, 39 Vt., 211, it is said:

"Ordinarily, statutes are held to operate prospectively and not retrospectively, unless it appears that they were designed to have the latter operation. When it is sought to have such operation given to a statute, to the impairment of an existing right, or the inflicting of a wrong, established and familiar principles would require the courts effectually to interpose and prevent such results. When without such consequences, the intention is apparent that the law should have such operation, such intention would prevail."

Instances of retrospective statutes sustained are *Stoddard* v. *Smith*, 5 Binney, 355; *Bolton* v. *Jones*, 5 Barr, 145. An examination of all the cases where a strict rule against retrospective statutes has been held, will show that they fall within the rules laid down in the cases above cited.

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The present instance is different. No vested rights are destroyed; no new penalties, forfeitures, or disabilities are imposed. The only new liability declared is a liability of the Treasury of the United States of which Congress is the constitutional guardian and over which it has sole control. The words used by Congress are to be construed in the plain meaning in which Congress had an unquestioned right to use them.

Legislative Gratuities.

The opinion of the Court of Claims treats the granting of a gratuity by Congress as something of so extraordinary a character that all presumptions must be against it. Whatever may be said by philosophic statesmen upon the evils of gratuities, the giving of gratuities to persons of present or past military and naval service is a common feature of congressional legislation.

Of this character is the grant of extra pay to officers of the Regular Army who served in the Mexican War. The Act of July 19, 1848, § 5, 9 Stat. L., 248, granted extra pay to the volunteers of the Mexican War, itself a gratuity. It was not granted to the Regular Army, undoubtedly for the reason (long afterward stated by this court, *United States* v. *Merrill*, 9 Wall., 614) that the regular officer had continuous employment and pay by the United States after the close of the war. Thirty years after the close of the Mexican War, Congress passed an act which the officers of the Regular Army who served in that war claimed entitled them to extra pay. They were sustained by the Court of Claims (*Emory* v. *United States*, 19 C. Cls., 254), and on appeal by this court (*United States* v. *Emory*, 112 U. S., 610). This was a gratuity and retroactive. Examination of the Act of 1879, will certainly show that "the language used is susceptible of another meaning," giving a gratuity to a far more restricted class.

The gratuity to soldiers and sailors, greatest in amount, was the grant of arrears of pension by the Act of January 35, 1879, § 1 (20 Stat. L., 265). The law previously in force had provided that a pension for which a claim had not been presented within five years from the accruing of right, should begin, when allowed, from the date of filing the last evidence necessary to establish it (R. S., § 4709). The Act of January 25, 1879, and its amendment of March 3, 1879 (20 Stat. L., 470), granted in all claims for pensions filed before July 1, 1880, arrears of pension from the date when the title to pension accrued. This grant was made because in the judgment of Congress justice to soldiers of the Civil War demanded it, although its cost was millions.

The additional bounty granted by the Act of July 28, 1866, §§ 12, 13 (14 Stat. L., 32), was a pure gratuity of thousands of dollars from a depleted treasury.

We have already seen that the credit to naval officers for volunteer service was a gratuity under the Act of March 3, 1883, 22 Stat. L., 473.

Another interesting instance of a military gratuity accomplished by a legislative accident is that shown in *United States* v. *Bowen*, 100 U. S., 508. Certain pensions to residents in Soldiers' Homes had by law prior to the Revised Statutes, been paid to the homes, apparently as compensation. In the revision the language of the statute was changed by accident and the pensions given to the veterans themselves. This grant was denied by the executive departments, but was enforced here, although a gratuity occurring purely through inadvertence, without purposed action of Congress.

This court said (p 513):

"The Revised Statutes must be treated as the legislative declaration of the statute law on the subjects which they embrace on the first day of December, 1873."

The case of *Adams* v. *United States*, 20 C. Cls., 116, like the last, grew out of "a change by the Revised Statutes, possibly inadvertently made," says the opinion.

It is not necessary to search the statutes of the United States for others of the numerous instances of this sort. It is for Congress to decide what grants shall be made from the public treasury, and the responsibility rests with Congress and not with the courts. This has been clearly declared by this court in *United States* v. *Realty Co.* (163 U. S., 441):

"Payments to individuals, not of right or of a merely legal claim, but payments in the nature of a gratuity, yet having some feature of moral obligation to support them, have been made by the Government by virtue of acts of Congress, appropriating the public money, ever since its foundation. Some of the acts were based upon considerations of pure charity."

This is an unusual case in favor of retrospective legislation. A prospective sugar bounty law was directly held unconstitutional by the Court of Appeals of the District of Columbia in *United States ex rel. Miles Company* v. *Carlisle*, 5 D. C. App., 138. The question of its unconstitutionality was raised and seriously considered, but not decided, in *Field* v. *Clark*, 143 U. S., 695, as well as in *United States* v. *Realty Co.* itself, but in this case it was held, without deciding whether a prospective sugar bounty would be valid, that the retrospective bounty was valid, although a gratuity, because for the payment of accrued moral obligations of the United States.

This Provision Independent.

The opening clause of § 13 of the Act of March 3, 1899, which we are considering provides that "after June 30, 1899," the pay of certain naval officers shall be changed. The Court of Claims, in the final paragraph of this opinion

(p. 7), says that this date should be carried into the clause now under construction:

"We think the meaning is that after June 30, 1899, 'all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the day of appointment, be credited, for computing their pay, with five years' service,' thereby fixing the beginning of the pay of all officers so appointed after June 30, 1899."

We respond to this:

1. That neither the form nor terms of the section bear this transportation of this date from one clause to another.

2. That the legislative history of the act shows that this clause is independent of the opening clause of the section.

3. That the independent subject-matter of the several parts of the third proviso requires an independent construction.

Dates Made Contradictory.

The introduction of this date contradicts the date expressly fixed as the date of the thing directed to be done. The clause says that a credit is to be given on a certain date—the date of appointment—and for a purpose named, computing pay. The thing directed to be done is to credit, not to pay. "Credited" is the predicate verb. There is a date given for this—"the date of appointment." It is expressly a retroactive credit. The date "after June 30, 1899," would contradict this date and therefore can not thus be introduced to modify the predicate verb. The Court of Claims sees this and in the passage last quoted introduces it as qualifying the dependent phrase "in computing pay," purely a result of the credit. That is, the court says, it is pay after June 30, 1899, which is to be affected. This would bring the date at the first of the section into this proviso, not as controlling the thing ordered in the proviso to be done, which has its own date fixed,

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but as controlling a result of the thing to be done. This circuity is not the normal use of language. It is a strain to the language to introduce this date to modify this dependent clause. It is erroneous grammatically; it is equally false logically.

The wrong principle adopted at the outset that the plain meaning of the clause is not to be given it, if it can be forced to bear any other, produces such inadmissible consequences and shows its own error.

Legislative History.

The unsoundness of this view can be seen by the fact displayed upon brief examination, that this clause came into the act as a piece of legislation independent of the opening clause of the section.

The bill which became the Act of March 3, 1899, entitled "An Act to Re-organize and Increase the Efficiency of the Personnel of the Navy and Marine Corps of the United States" (30 Stat. L., 1004), was known in its legislative history as H. R. 10403, 55th Congress, 3d Session. Section 13 of the present act passed the House as § 16 of that bill and contained but two clauses, the first, that appearing in the act in substance as the opening clause of the section, and the second, beginning a new sentence, that appearing as the third clause of the third proviso. The bill was reported to the Senate by the Committee on Naval Affairs on January 25, 1899, and this section was then substantially the same in form except that the first clause of the third proviso was introduced as a proviso after the opening clause. It was re-committed to the Committee on Naval Affairs and among a large number of changes made upon its being again reported, § 12 (the present § 13) then appeared with the opening clause much modified, with clauses added corresponding to the first and second provisos and with this proviso appearing for the first time

in its present form and in its present relation to the clauses in regard to Naval chaplains and prize money. These three parts of this proviso remained in the bill in its successive changes. Introduced in this independent way, it should be construed as an independent piece of legislation, like the clauses preceding and following it. The sections referred to, of the bill in its different stages, form an appendix to this brief.

The Subject Different.

Analysis of the subject-matter of this remarkably constructed section shows that this third proviso is made of three pieces of independent legislation, and that the fourth and fifth provisos are in substance provisos to the entire bill and not simply to the opening clause of this section of which they form a part.

In a general way it may be said that of the first seventeen sections of this act devoted to the Navy, all but one are concerned with such matters as the transfer of engineer officers to the line, the composition of the active list, the rules governing retirements and the creation or regulation of certain corps and grades. Section 13 is devoted to pay. But this general division of these sections is not exact, because questions of pay are directly treated in §§ 7, 9, 11, 12 and 15, and changes in pay result from the provisions §§ 1 and 2. On the other hand, § 13 also contains provisions relating entirely to other subjects than pay.

Classification of Naval Officers.

For an understanding of the terms of § 13, the classification of the higher naval personnel must first be understood.

Officers of the Navy are divided into commissioned and warrant officers. The commissioned officers are divided into two general classes, line and staff. The line comprises those officers who have command and who form the

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regular line of promotion from ensign to admiral. The staff consists of six corps: The Medical Corps, the Pay Corps, the Construction Corps and the Corps of Chaplains, Professors of Mathematics and Civil Engineers. The old Engineer Corps is amalgamated with the line by this act (§ 1).

There is a third small class of commissioned officers, created by § 12 of the Navy Personnel Act, the Chief Boatswains, Chief Gunners, Chief Carpenters and Chief Sailmakers, promoted from the warrant officers.

Among the commissioned officers, appointments are made from Annapolis, to the line and the construction corps; and from civil life to the medical and pay corps, and the corps of chaplains, professors of mathematics and civil engineers. In the engineer corps, abolished by this act, the earlier appointments were from civil life, the later from Annapolis. Warrant officers may be appointed either from the enlisted men of the Navy or from civil life.

Analysis of Section 13.

Section 13 consists of an opening clause and of five provisos, each proviso single, except the third, which contains three separate pieces of legislation. These relate to the following subjects:

OPENING CLAUSE—Pay of Commissioned Officers of

a. The Line;
b. The Medical Corps;
c. The Pay Corps.

FIRST PROVISO—1. Pay of Such Officers on Shore;
2. Pay of Warrant Officers on Shore.

SECOND PROVISO—Pay of Naval Officers on Shore Beyond Seas.

THIRD PROVISO—1. Rank of Chaplains;
2. Credit of five years for computing pay to all commissioned and warrant officers appointed from civil life;
3. Repeal of laws distributing prize money or bounty.

FOURTH PROVISO—Pay of Commissioned Officers Not to be Reduced by this Act.

FIFTH PROVISO—Pay on Retired List Not Affected.

Here are nine pieces of legislation relating to various naval subjects and governing various classes of persons, some having direct connection with each other, some quite disconnected.

The opening clause fixes the pay of commissioned officers of the line and of two of the staff corps, the medical and pay corps, after June 30, 1899.

The first proviso fulfills the distinctive office of a proviso by making an exception in the pay of the officers as provided in the opening clause. This is itself subjected to a like exception, though not introduced by a proviso, of a different class of officers. This first proviso is the only one which relates to the same classes of officers considered in the opening clause, and even here the exception introduces another class.

The second proviso is not confined to the line and the two corps named. It relates to the pay of "naval officers." The Comptroller of the Treasury has so decided in the case of Naval Constructor Gillmor (6 Comp. Dec., 331) an officer of another staff corps.

The third proviso contains three absolutely distinct provisions. The first of these gives rank to certain chaplains who previously had none (R. S. §§1395, 1479). This is doubly differentiated from the opening clause because that has no concern either with rank or with chaplains. The

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chief provision of this act relating to rank is in §7 (last proviso) and this really belongs with that section.

The second clause of the third proviso, the one under discussion, gives a credit of five years' service to all officers including warrant officers appointed from civil life. Of the three classes of commissioned officers included in the opening clause, this provision has nothing to do with officers of the line (with a very few exceptions); it concerns the other two classes, medical and pay officers, and in addition the commissioned officers of the corps of chaplains, professors of mathematics and civil engineers and warrant officers. The claimant is not affected by the change of pay made by the opening clause.

The provision next following relates to an absolutely different subject-matter. It has no concern with pay or rank or length of service. The repeal of the laws authorizing the distribution of prize money or bounty, affects not only all commissioned officers, but every sea-going officer or man in the Navy from admiral to apprentice.

The fourth proviso is limited neither to those commissioned officers, whose pay is affected by the opening clause, nor to the changes made in pay by section 13. It declares in general that the present pay of any commissioned officer now in the Navy shall not be reduced by any provision of this entire act. A large class protected by this clause consists of officers of the Engineer Corps transferred to the line by § § 1 to 6 of the same act. Many of these officers would have been reduced in pay on the day of their transfer, March 3, 1899, but were protected by this proviso from that date.

The last proviso relates equally to the entire act in providing that nothing in it shall change the pay of any retired officer. Its scope is therefore wider than the opening clause of § 13. After a complete analysis of this section, the conclusion is plain that upon no sound theory can the

opening date "after June 30, 1899" be made to qualify the verb in a dependent phrase in the third proviso. The Navy Department concedes that the chaplains here given rank are to have it from the same date from which all other staff officers are given rank by § 7, March 3, 1899. But, if "after June 30, 1899," is to be read into the second part of the third proviso, it must also be read into the first. It cannot skip over one into the other.

Passing to the third part of the same proviso abolishing prize money, it cannot be said that a capture made between March 3 and July 1, 1899, would have been distributed in prize. This third part of the third proviso, like the first and second, is an independent piece of legislation, taking effect upon the passage of the act. It affects all the persons named in the opening clause, and many more; but its effect is not for that reason to be postponed to the date contained in the opening clause of the section.

No more can the second part be so read. Some of the persons described in the opening clause and some of those described in this clause are the same. Officers of the medical and pay corps are generally, but not always, appointed from civil life. Occasionally these are appointed from the enlisted ranks of the Navy. Officers of the line are not appointed from civil life. Chaplains, civil engineers and professors, generally appointed from civil life, are not embraced in the opening clause. Thus the classes described are different in the two parts of the act.

Equally the subject is different. The act opens by making a new rate of pay. This clause gives a credit to some officers who have the new rates of pay and to some who retain the old. It relates primarily to credit and not to pay. Pay, under this clause, appears only as an incident of the credit granted. Nor does any reason appear why the date in the opening clause needs to be carried over. The opening clause and the two provisos following are a prospective

pay table for certain officers. There that subject stops and is not resumed. The remaining parts of the section are different in scope from the first and might as well have been placed in some other part of the act, since they relate either to other subjects than pay or equally to the provisions of § 13 and to provisions of other sections.

Two Kinds of Provisos.

In the Royce opinion, this attempt to carry this date through the act is placed upon the rule quoted from Justice Story's opinion in *United States* v. *Dickson*, 15 Pet., 165, that "a proviso carves special exceptions only out of the enacting clause."

The first proviso of this section fulfills this definition and the exception in the last words of the same proviso is itself an instance in substance though not in form, of the same sort of a proviso. See the act, *Ante*, p. 4. The statute under consideration in the case of *United States* v. *Dickson* was exactly of this character.

Not one of the other provisos or pieces of provisos in this section meets to any degree the definition of Justice Story. How does the rank of chaplains or the distribution of prize money form an exception to the pay of the line and two other staff corps? The introduction of this rule into this discussion obscures the real question here, because the proviso here is plainly legislation of an entirely different kind.

There is another kind of proviso than that stated by Justice Story, also judicially recognized. To this second class, these later provisos of this section belong. This use is succinctly stated in *Georgia Banking Company* v. *Smith*, 128 U. S., 174 181:

"It is a common practice in legislative proceedings, on the consideration of bills, for parties desirous of securing amendments to them, to precede their proposed amendments with the term 'provided,' so as to declare that, not-

withstanding existing provisions, the one thus expressed is to prevail, thus having no greater signification than would be attached to the conjunction 'but' or 'and' in the same place, and simply serving to separate or distinguish the different paragraphs or sentences."

The most celebrated instance of this is that referred to by this Court in *Hadden* v. *The Collector*, 5 Wall., 110, the Act of July 2, 1864, § 3, 13 Stat. L., 351:

"The law declaring that in the Courts of the United States that there shall be no exclusion of any witness on account of color, nor in civil actions when he is a party to or interested in the issue tried, is contained in a proviso to a section in the appropriation act of 1864, the section itself directing an appropriation for detecting and punishing the counterfeiting of the securities and coin of the United States."

See also the proviso construed in *United States* v. *Ewing*, 140 U. S., 142.

This use of provisos is so commonplace that it is useless to cite illustrations afforded by half the acts in the Statutes at Large. The last proviso of § 7 of this act is an excellent example of this, a clause just as independent of that to which it is attached as the two separate enactments which follow.

Summary.

The decision of this case rests, we think, upon the plain meaning of the words under discussion, as stated in the early part of the brief. The fundamental error of the Court of Claims is that after seeing the result of this meaning, it resorted to considerations outside the words used to modify this natural meaning. We insist:

I. That all exterior presumptions are inadmissible, the language of the act being plain.

II. That the presumption against retroactive legislation does not apply to laws not affecting vested rights.

III. That there can be no presumption against a grant of back pay to officers or men in the military service.

IV. That the date in the opening clause cannot be brought into the clause under discussion because:

a. This is the kind of proviso described in *Georgia Banking Co.* v. *Smith*, 128 U. S., 181, a piece of independent legislation.

b. This clause relates to a different class of persons.

c. This clause relates to credit and not to pay.

d. This clause already contains a date fixing the time of its predicate verb.

e. The preceding and subsequent clauses of the same proviso not being interpreted as requiring this date, the date cannot be capriciously selected for this clause.

V. That the clause can be read harmoniously with the Act of March 3, 1883, only when read like that Act, retrospectively.

For these reasons we ask a reversal of the judgment below.

GEORGE A. KING,
WILLIAM B. KING,
Attorneys for Appellant.

Appendix.

Section 13 of the Navy Personnel Act, as it appears in various stages of legislation, H. R. 10403, 55th Congress, 3rd Session.

As it passed the House of Representatives:

"Section 16. The commissioned officers of the line of the Navy, including staff officers of like grade or rank, other than naval constructors and chaplains, shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army or Marine Corps. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or other property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy in time of war, are hereby repealed."

As first reported in the Senate, January 25, 1899:

"Section 12. The commissioned officers of the line of the Navy, including staff officers of like grade or rank, other than naval constructors, shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army or Marine Corps: *Provided*, that naval chaplains, who do not possess relative rank, shall have the rank of lieutenant in the Navy. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or other property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy in time of war, are hereby repealed."

As reported to the Senate, February 8, 1899, after recommittal:

"Section 12. That commissioned officers of the line of the Navy and staff officers of like grade or rank shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers

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of corresponding rank in the infantry of the Army: *Provided*, That officers of the line of the Navy and of the medical and pay corps and chaplains (except officers above the rank of commander, who shall receive, both when at sea and ashore, an amount equal to the pay and allowances, except forage, of officers in the infantry of the Army of corresponding rank), shall, when on sea duty, receive no allowances, but fifteen per centum in addition to the pay of the corresponding rank in the infantry of the Army; and when on shore shall receive the allowances, but fifteen per centum less pay than is now or may be provided by or in pursuance of law for the corresponding rank in the infantry of the Army: *Provided Further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the infantry of the Army detailed for duty in similar places: *Provided Further*, That naval chaplains, who do not possess relative rank, shall have the rank of lieutenant in the Navy; and that all officers above the grade of warrant officers who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: And *Provided Further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law."

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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

ULYSSES S. G. WHITE, APPELLANT,
v.
THE UNITED STATES. } No. 75.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This cause was heard in the Court of Claims of the United States on the 31st day of March, 1902, and the court made the following findings of fact:

FINDINGS OF FACT.

I.

The claimant, Ulysses S. G. White, was on the 9th day of January, in the year 1887, appointed a civil engineer in the Navy from civil life. He remained such civil engineer and was such at the time of the passage of the Navy personnel act of March 3, 1899.

II.

The claimant, by reason of service in the Army, amounting to six years seven months and twenty-one days, previous to his entry into the Navy, reached the maximum pay of his grade, $3,500, May 19, 1885, under Revised Statutes, sections 1478, 1556. Thus the amount of pay received by him between the 9th of January, 1877, and the 19th of May, 1885, was as follows:

Three years and 130 days, at $2,700 per annum	$9,061.64
Five years, at $3,000 per annum	15,000.00
Total	24,061.64

If he were, upon the date of his appointment, credited for computing his pay with five years' service, and entitled to be paid from that date, he would receive pay at the following rates:

Three years and 130 days, at $3,000 per annum	$10,068.49
Five years, at $3,500 per annum	17,500.00
Total	27,568.49

or $3,506.85 more than he has previously received.

(Record, p. 3.)

Upon the foregoing findings of fact the court below rendered judgment dismissing the claimant's petition. From the judgment so entered the claimant makes this appeal.

Section 1556 Revised Statutes fixes the pay of officers of the Navy and we here give that por-

tion of the section applicable to the pay of civil engineers:

> SEC. 1556. * * * during the first five years after date of appointment, when on duty, two thousand four hundred dollars; on leave or waiting orders, one thousand five hundred dollars; during the second five years after such date, when on duty, two thousand seven hundred dollars; on leave or waiting orders, one thousand eight hundred dollars; during the third five years after such date, when on duty, three thousand dollars; on leave or waiting orders, two thousand one hundred dollars; after fifteen years from such date, when on duty, three thousand five hundred dollars; on leave or waiting orders, two thousand six hundred dollars.
>
> (See sec. 1556, p. 267, Revised Statutes.)

By reference to the findings it will be seen that this claimant arrived at his maximum pay ($3,500) May 19, 1885, and that on said day he had been in the Navy just 8 years, 4 months, and 10 days, or, as it is designated in the record, 8 years and 130 days.

By reason of services in the Army for 6 years, 7 months, and 21 days prior to his appointment in the Navy, he was credited with said service in the Army, which, added to the time he served in the Navy, brought his total service, whereby he reached his maximum pay, to the amount of 15 years. It will be observed by the said section 1556 that there are three lustrums of pay for civil engineers, the

first by which during the first five years the officer for his normal services receives $2,400; during the second five years, $2,700; during the third five years, $3,000, and after 15 years, $3,500, which may be considered, of course, as continuous.

By reason of the prior service the claimant never entered upon the first lustrum whereby he was to receive $2,400, but immediately was placed in the second lustrum and received $2,700 per year the first 3 years 4 months and 10 days of his service in the Navy, and for the succeeding 5 years at $3,000 per year.

The third proviso of section 13, of the so-called navy personnel act provides in part as follows:

> * * * and that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited for computing their pay with five years' service. * * *

For the convenience of the court, section 13 will be hereafter given in full.

The claimant contends that by virtue of said proviso he became entitled to receive the maximum pay of his grade, to wit, $3,500 per year, on the 19th day of May, 1880, instead of the 19th day of May, 1885. That is, that he is entitled under said proviso to be credited with five years' service as of the date of appointment, January 9, 1877, and thereby to have his pay since that day increased in the amount of $3,505.85.

ARGUMENT.

The claimant contends that the language of the statute is plain and unambiguous and needs no interpretation as it interprets itself; but a fitting answer to this is that the accounting officers differ somewhat as to the meaning of the words used in the statute from the claimant and his counsel; and furthermore, the court below was divided as to the meaning of the language used. When a statute contains words that are of sufficient force and clearness to furnish their own interpretation and meaning without any reference to other sections or parts of the statute, all parties who are interested therein will agree as to the import and meaning of the words used; but where judges and others who are charged with the responsibility of construing a statute differ as to its meaning, then the language used therein is clearly a subject of interpretation and construction.

The act of March 3, 1899, commonly termed the navy personnel act, is entitled as follows: "Chap. 413. An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States."

(See 30 Stat. L., p. 1004.)

Section 13 of said act provides as follows:

> That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay

and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army: *Provided*, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty; but this provision shall not apply to warrant officers commissioned under section twelve of this act: *Provided further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the Army detailed for duty in similar places: *Provided further*, That naval chaplains who do not possess relative rank shall have the rank of lieutenant in the Navy; and that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: *And provided further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall

> continue to receive pay according to existing law: *And provided further*, That nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the Navy.

The statute under consideration is found in the third proviso of said section in the following words:

> And that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service.

LITERAL INTERPRETATION.

The claimant in this case contends for a literal interpretation of the words "officers who have been appointed to the Navy from civil life," and devotes a large portion of his brief to citing authorities in support of a literal interpretation. All of these authorities are applicable when there is no reason to doubt that the language used has but one meaning; but where the words are a proper subject for interpretation and construction, we think the authorities cited by claimant in support of a literal interpretation are not applicable. In urging his contention, claimant's counsel quote from Black on Interpretation of Laws (Preface, p. III) to the effect that the doctrine of "equitable interpretation" has become obsolete. Just what doctrine the author meant as having become obsolete he

fully sets forth on page 42 of his valuable work, and says:

> Equitable construction was a principle by which the judges, disregarding the letter of a statute, extended its provisions to cases which, in their judgment, were within the same mischief which the law was designed to remedy, though they were not expressly provided for, or by which, on considerations of justice and right reason, they excepted from the operation of the statute cases which were covered by its terms, but which, in their opinion, were not fairly to be included in it. The power to make such constructions is now disavowed by the courts.

Equitable construction of statutes and the necessity for such construction arose out of the early acts of Parliament, which were brief and general in their terms. The courts proceeded upon what was called the equity of the statute, which was the construction made by the judges that cases out of the letter of the statute yet being within the mischief or cause of the making of the same shall be within the same remedy that the statute provides. (See Sutherland on Statutory Construction, sec. 413.) Of course what has been termed "equitable construction of statutes" in the above sense has been abandoned, but the principle that it is the duty of the court to interpret the will and intention of the law-making power is as much in vogue now as at any time during the history of legislative bodies. Black on Interpretation of Laws has not

abandoned the rule that it is the duty of the courts to find and follow the legislative will when interpreting any given law, and the court below in rendering its opinion in this case certainly did not abandon that well-recognized principle governing the interpretation of statutes. The very first definition given by Black is as follows:

> Interpretation as applied to written law is the art or process of discovering and expanding the intended signification of the language used—that is, the meaning which the authors of the law designed it to convey to others. (See p. 1 of said work.)

The author says:

> The object of all interpretation and construction of statutes is to ascertain the meaning and intention of the legislature to the end that the same may be enforced.

Of course, the meaning and intention should be ascertained, if possible, first from the language of the statute itself, but if the language is ambiguous or doubtful or lacks precision, the intended meaning must be sought by aid of all pertinent and admissible considerations. This is the doctrine announced by all writers on interpretation and construction of statutes. But while the doctrine of "equitable interpretation" of statutes as anciently used may have become obsolete, yet the principle of liberal interpretation and construction is still in force.

> The modern doctrine is that to construe a statute liberally or according to its equity is

> nothing more than to give effect to it according to the intention of the lawmaker as indicated by its terms and purposes. (See Sutherland on Statutory Construction, latter part of sec. 415.)
>
> Where the meaning of a statute or any statutory provision is not plain a court is warranted in availing itself of all legitimate aids to ascertain the true intention, and among them are some extraneous facts. The object sought to be accomplished exercises a potent influence in determining the meaning of not only the principal, but also the minor provisions of a statute. To ascertain it fully the court will be greatly assisted by knowing, and it is permitted to consider, the mischief intended to be removed or suppressed, or the necessity of any kind which induced the enactment, * * * the sense of the legal profession in regard to it, the course and usages of business which it will affect. (See the author quoted, sec. 292.)

Again:

> A statute must be construed with reference to the whole system of which it forms a part. (See sec. 284 of the work cited.)

In construing and interpreting laws the literal sense of the words used in the statute should not necessarily control.

> The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature apparent by the statute; and, if the words

> are sufficiently flexible to admit of some other construction, it is to be adopted to effectuate that intention. * * * *The particular inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense they were intended to be used as they are found in the act.* The sense in which they were intended to be used furnishes the rule of interpretation, and this is to be collected from the context; and a narrower or more extended meaning is to be given according to the intention thus indicated. (See Sutherland on Statutory Construction, sec. 246.)

PROVISOS.

Claimant's counsel devote considerable space in their able brief in support of their proposition that the proviso under consideration is a piece of independent legislation. The office of a proviso is generally either to except something from the enacting clause or to qualify or restrain it generally. It is confined to that which precedes it or to the section to which it is appended, unless clearly intended to have a wider scope. (Black on Interpretation of Laws, 273; *Minis* v. *United States*, 15 Peters, 423; *Ryan* v. *Carter*, 93 U. S., 78; *Wyman* v. *Southard*, 10th Wheat., 1, 30.)

A proviso is always to be read in connection with the section or paragraph of which it forms a part and of which it is a proviso. It is true it often happens that independent legislation is intro-

duced in the shape of a proviso, but this particular proviso can not be regarded as independent legislation. It relates directly to the particular subject of section 13, namely, the pay of officers of the Navy and officers whose pay is by said section to be construed with reference to the pay of Army officers who receive the full benefits of the credit of service herein provided. It is true that the proviso enlarges, instead of restraining, the operation of the section, but this is sometimes made the office of a proviso. It is therefore properly to be treated as a limitation to and a part of section 13, and not as independent legislation, and should be held to go into effect at the same time as the main provision of the section to which it is attached, namely, July 1, 1899; and so considered it comes within the operation of the rule that when the legislature fixes a future date for an act to go into effect it thereby stamps it with a prospective character and precludes the construction that it is to be treated as retrospective. The reason is evident, as illustrated by this case. If it had been the purpose or intention of Congress to have granted the plaintiff an absolute sum of money upon the service already rendered, there is no apparent reason why it should postpone the granting to a future date. While provisos may be, and frequently are, used as independent pieces of legislation, as well as to carve special exceptions only out of the enacting clause, yet the language used by legislators must be considered from the view point of the body enacting

the law when legislating upon the subject under consideration, and in determining the nature of provisos the intention of the whole act will control the interpretation of the parts, and this interpretation is to be ascertained by considering the entire statute.

> Where the words * * * employed by the legislature do not directly apply to the particular case we must consider the object of the act. (See last of section 241, Sutherland on Statutory Construction.)

The third proviso of section 13 embodies within it the legislation and words sought to be interpreted by the court, and in doing so the court of course will consider the purpose and intention of the whole legislation contained within the act, which is entitled "An act to reorganize and increase the efficiency of the personnel of the Navy and the Marine Corps of the United States." The title states clearly the purposes and objects of the act, and all legislation embodied within the same must be considered as having in view and contemplation the accomplishment of the objects sought as indicated by the title, unless there is a clear, definite, and plain intention of the legislators that the proviso or exception is meant to be a piece of legislation absolutely separate, apart from, and independent of the subject under discussion. No such intention is indicated by this proviso. If any other legislation was intended to be a part of the act, Congress would undoubtedly have indi-

cated specifically and clearly just what legislation was incorporated in the act not pertinent to the object by using unmistakable terms.

As forcibly expressed in the opinion of the court below in this case:

> The purpose of the act as expressed in the title thereto is "an act to reorganize and increase the efficiency of the personnel of the Navy and the Marine Corps of the United States," and while the body of an act can not be controlled or restrained by the title it may be referred to in connection with the language of the act to ascertain the meaning of the statute where the language is susceptible of different construction. (*Church* v. *United States*, 143 U. S., 457.)
>
> It can hardly be contended that a payment of a gratuity has anything to do with the reorganization or the increasing of the efficiency of the Navy.

IS THE STATUTE IN QUESTION RETROACTIVE LEGISLATION?

Except in the case of remedial statutes, and those which relate to procedure in courts, it is a general rule that statutes do not operate retrospectively unless it is explicitly so declared, or unless such intention appears so clearly as to leave no room for a reasonable doubt on the subject. This is the doctrine announced by Black on Interpretation of Laws, Cooley on Constitutional Limitations, and a large number of cases cited by said authorities.

> Retrospective laws being in their nature odious, it ought never to be presumed that

> the legislature intended to pass them where the words will admit of any other meaning. *Underwood* v. *Lilly* (10 Serg. & R. 97, 101.)
>
> Legislation of this character is exceedingly liable to abuse, and it is a sound rule of construction that a statute should have a prospective operation only, unless its terms show clearly the legislative intention that it should operate retrospectively. (Cooley on Constitutional Limitations (6 ed.), 455.)
>
> Generally when the legislature desires that the statute shall operate upon past or present facts or transactions, as well as upon future transactions, its intention in that regard will be expressed by apt words. (Black on Interpretation of Laws, 252.)

We think the argument of claimant's counsel on the question of retrospective legislation is answered by the fact that there were in the Navy at the time this act was passed officers appointed from civil life whose future pay would be increased by the credit of five years' service as "on the date of appointment," but who, of course, would have received no increase of pay had the statute been limited to future appointments only. The law operates for those already appointed, as well as for those who might thereafter be appointed, where the credit for service would increase their future pay. Of past appointees it benefited both those who would have continued to be paid according to old navy rates, and who were serving in the grades to which appointed from

civil life, but had not reached their maximum rates, and also those who would be paid according to army pay, whether serving in the grades to which appointed or not and who had not reached their maximum rates.

Statutes relating to increased pay have universally been held to be prospective unless by their language or by necessary implication a different construction becomes imperative, notwithstanding they may apparently operate unjustly toward officers who have previously rendered similar services for less money, and notwithstanding the law may operate to increase the pay of one officer and not that of another in the same grade.

The act of February 24, 1881 (21 Stat. L., 341), provided for army officers that "the actual time of service in the Army and Navy, or both, shall be allowed all officers in computing their pay." This statute has always been held to operate prospectively, although at the time it was passed many officers had reached their maximum rates of pay for length of service, and could not receive any benefit from the additional credit which they were to receive unless the statute should be construed retrospectively so as to increase their pay for prior services, as it is contended that the statute under consideration should be construed.

Prior to the act of July 15, 1870 (16 Stat., 315, 330), most of the lower grades in the naval service to which first appointments are commonly made were not graded for pay for length of service. By

that act, the provisions of which relating to pay are found in section 1556, Revised Statutes, different rates of pay were prescribed for different grades, varying in each grade according to length of service or the number of pay periods of given length which the officer should serve in that particular grade. It would follow, therefore, that an officer appointed from civil life to a grade not having graduated pay and promoted to another grade before the act of 1870 gave graduated pay to the grade to which he was appointed would derive no benefit whatever from now receiving the five years' credit as of date of appointment.

By way of illustration, take the case of Captain A., United States Navy, who entered the service from civil life July 5, 1862, as acting master. He was promoted to master March 12, 1868, and to lieutenant December 18, 1868. During the time he was acting master the pay of those grades was not graduated for length of service. If credited now with five years' service as "on date of appointment," his record would stand as though he had rendered five years' service as acting master on July 5, 1862, or as though he had been appointed July 5, 1857. This additional service would have had no effect whatever upon his rate of pay during the time he was acting master or master in the Navy. By the act of July 15, 1870, the pay of the grade of master was increased and graded according to length of service in that

grade, but having been promoted before that time to the grade of lieutenant he derived no benefit from said act. So it appears that, notwithstanding this act be construed retroactively, he would receive no increase of pay, though credited, as the law directs, with five years' service "on date of appointment." Retrospective interpretation not only does not relieve the statute from inequality in its operation, but does not relieve it from requiring what seems to be the useless act of crediting an officer's record with service for the purpose of computing his pay, when in fact such credit will have no effect upon his rate of pay.

To illustrate further the inequality of the operation of the statute if construed retroactively, take the two cases of Pay Director B, United States Navy (retired), and Paymaster-General C, United Navy, both of whom were appointees from civil life.

B entered the service September 2, 1856, as purser, the name by which paymasters were then called. At that time this grade was graduated according to length of service therein for pay purposes only for the time the officer was on leave or waiting orders. If B were given five years' credit as of September 2, 1856, and his pay increased accordingly from that date, he would receive $200 per annum more pay than he did receive during the time he was on leave or waiting orders. By the act of June 1, 1860 (12 Stat., 25), the pay of paymasters (still called purs-

ers) was increased, and also an increase given for length of service, whether at sea, on shore duty, or waiting orders, the pay being rated by periods of five years' service up to twenty years, when they reached their highest rates of pay for length of service. B. would receive the benefit of the five years added to his service to increase his pay through these various periods until he had reached his maximum, which, of course, would be just five years sooner than he did reach it. If the statute be applied to his past service, he would receive approximately $5,000 additional.

Paymaster-General C. entered the service as assistant paymaster March 19, 1862, and was promoted to the grade of paymaster March 9, 1865. Assistant paymasters received certain rates of pay at sea, on shore duty, or waiting orders, during the first five years after date of commission, and increased rates after that period. The proposed credit of five years would give C. the maximum rates of pay from date of appointment. The difference between pay during the first five years and pay after five years being $200 per annum, whether at sea, on shore, or waiting orders, would amount in his case to $1,000, provided he has received no credit for service under any other act. But his service as assistant paymaster, or his credit for service as an appointee from civil life, can not avail him to increase his pay in the grade of paymaster through any of his pay grades up to twenty years, when he reaches his maximum rates of pay. Pay Director B, there

fore, receives the full benefit of his five years' constructive service to increase his pay as paymaster, while Paymaster-General C gets no benefit whatever therefrom, simply because he entered the grade of paymaster through the grade of assistant paymaster, which latter grade had no existence when B entered the service as purser or paymaster.

Another inequality flowing from the proposed retrospective operation of the statute may here be noted. Since the Navy personnel act officers of the line and of the Medical and Pay Corps are, with certain exceptions, paid according to the Army rates of pay, while the other officers and some also in the corps mentioned receive pay according to the Navy schedule formerly existing. Officers now paid according to Army rates would, under such construction, receive the five years' credit for appointment from civil life so as to increase their pay in the grades in which they were appointed, and would also receive credit for the same service in estimating their current pay according to Army rates, thus receiving a double benefit. On the other hand, officers paid according to the Navy rates could receive the benefit of but a single credit, and that in the grade in which they entered.

It is true that these inequalities are not of themselves an argument against the proposed retrospective construction, were the language of the statute such as to require such construction, but it must not be forgotten that that is the point in

issue—whether or not the language does require that construction—and in arriving at the will of Congress it is proper to take into consideration all the conditions surrounding the enactment of the law when the language itself is not explicit. At all events, the foregoing illustrations effectually dispose of the contention that the law should be construed retrospectively in order that it may operate equally, and not require the useless formality of giving a credit of service for pay purposes where a credit would do no good.

GRATUITIES.

Counsel for claimant devote a large portion of their brief to the discussion of "legislative gratuities," and state as follows:

> The opinion of the Court of Claims treats the granting of a gratuity by Congress as something of so extraordinary character that all presumptions must be against it. Whatever may be said by philosophical statesmen upon the evils of gratuities, the giving of gratuities to persons of present or past military and naval service is a common feature of Congressional legislation.

We think counsel are in error when they state that the opinion of the court below "treats the granting of a gratuity by Congress as something of so extraordinary character that all presumptions must be against it." The opinions rendered by the Court of Claims in cases where the statute has been under construction, including the case at bar,

do not discourse upon evils of gratuities. They nowhere condemn gratuities; they give no license for such assumption by counsel. The furthest extent upon the subject that the opinions reach is that when granting gratuities the legislative power *must use language that will admit of no doubt of its intention*, and we know of no authority that holds to any different doctrine.

CONSEQUENCES OF THE STATUTE.

The doctrine of inconvenience.

Claimant's attorneys show the consequence of the statute under consideration if their view in this case is correct, to wit, that there is due their client the sum of $3,506.85 by reason of five years' credit service. If anything further were necessary to be presented on the part of the Government than what has already been argued as to why this statute could not receive the interpretation asked for by claimant's counsel, we might very properly urge the doctrine of *Inconvenience*, inasmuch as the statute seems ambiguous.

It is a well-known principle that—

> In the consideration of the provisions of any statute they ought to receive such a reasonable construction, if the words and subject-matter will admit of it, as that the existing rights of the public or of individuals be not infringed. Considerations of what is reasonable, convenient, or causes hardship and injustice have a potent influ-

> ence in many cases. * * * (See section 322 of Sutherland on Statutory Construction.)

Again,

> A construction which must necessarily occasion great public and private mischief must never be preferred to a construction which will occasion neither, or not in so great a degree, unless the terms of the instrument absolutely requires such preference. (Section 323 of above work.)
>
> * * * The considerations of evil and hardship may properly exert an influence in giving a construction to a statute *when its language is ambiguous or uncertain and doubtful*, but not when it is plain and explicit. * * * The argument of inconvenience is very strong with the statute, is ambiguous, and fairly open to two constructions. (See section 324 of the work cited.)

The well-known doctrine of Inconvenience is upheld by Black on Interpretation of Laws, Endlich on the Interpretation of Statutes, and by every other author that we have consulted on statutory interpretation and construction. Of course it only applies when the statute sought to be interpreted is doubtful or ambiguous or fairly open to more than one construction. By consulting the roster of the Navy of the United States it will be found that some six hundred officers have been appointed to the Navy from civil life. Inasmuch as these officers are on the roster of the Navy, may we not

assume that the court will take judicial notice of the fact when attention is called thereto.

If the interpretation that claimant's counsel seek to place upon the statute under consideration is the correct one, and the court should so find, it undoubtedly would open the doors of the United States Treasury to nearly all of these six hundred officers for claims of like nature to the one under consideration. And if each of their claims were as large as claimant's demand they would draw from the Treasury some two millions of dollars in the nature of an absolute gratuity granted by the United States.

Again, such a construction of the statute would entail endless confusion in readjusting the pay of each one of these six hundred officers of the Navy appointed from civil life, so that each of them could receive his proper proportion of increased pay by reason of being credited with five years' service at the date of his appointment. They draw different salaries for different kinds of service according to their rank and grade. They fill positions in the Medical Corps, the Pay Corps, chaplains, professors of mathematics, civil engineers, carpenters, and Marine Corps; and to readjust the compensation of these officers upon the principle contended for by claimant's counsel would be an endless and almost impossible task, a result that Congress did not contemplate, and an injustice to the United States Government that it did not intend.

The cases of A, B, and C, to which we have referred in the body of this brief, indicate what hardships and injustice would result to the defendants and what great public and private mischief would be incurred should the claimant prevail in his construction of the statute under consideration; while, on the other hand, the interpretation contended for by defendants would occasion neither hardship, private mischief, injustice, nor inconvenience, but is equitable, just, and, as we believe, in accordance with the intention of Congress.

A LITERAL READING OF THE STATUTE DOES NOT SUPPORT CLAIMANT'S CONTENTION.

Finally we insist that, adopting claimant's contention that the statute under consideration should be read literally, it nevertheless furnishes no basis for this claim. At the outset it is clear that it is impossible to make a literal application in the claimant's case of the words of the statute "shall on the date of appointment be credited * * * with five years' service," since "shall" implies future action, and the date of the claimant's appointment has long since passed. Accordingly, to meet the claimant's case it is necessary to change the literal words of the statute so as to read "shall as of the date of appointment be credited." Passing this, however, and giving the claimant the benefit of this change in its literal language, the statute still furnishes no foundation for the claimant's contention, for it simply directs

that the record of the service of the officers mentioned shall be increased five years by adding thereto a term of five years immediately prior to the date of their appointment, and that this shall be done "for computing their pay." But the pay of such officers is their official salary—their compensation for services rendered in the execution of the duties of their official position. The computation of this pay rests with the paymaster, and is done by him from time to time pursuant to the statute and having reference in each case to the continued term of service of such officer.

The effect of compliance with this statute upon the computation of the pay of each such officer is to increase from the date that the statute took effect the amount of salary to be thus computed for every officer except those who at the time that the statute went into effect were already receiving their maximum pay. It is for just this literal compliance with the statute that the defendant asks. Such action would result in giving the benefit of the statute in the way of additional pay not only to every officer contemplated therein appointed after the statute went into effect, but also to every such officer who at the time was not receiving maximum pay, thus embracing within its provisions for computation of pay all officers, including warrant officers, "who *have been or may be appointed* to the Navy from civil life," except those to whom the statute can not be made applicable. The claimant, however,

asks for something absolutely outside the plain and literal language of the statute. That which he calls for, instead of being a computation of his pay, is a revision of his past account, and this, as he himself acknowledges, by bestowing a gratuity, there being no sort of pretense that he has in any way earned the increased amount that he asks for, nor that there is any consideration whatever for it. His claim, summed up, is that the literal language of the statute should be so changed as to read in his case "for the purposes of a revision of the claimant's official account with the United States in order that a gratuity may be computed for him."

The claimant insists that such an interpretation of the statute is warranted by the decision in the case of *Hawkins* v. *The United States* (19 C. Cls. R., 611), but the language of the statute upon which that decision was based is so absolutely unlike that of the statute under consideration, and the decision itself is so clearly rested upon the peculiar language of that statute, that there is no practical resemblance between the cases. In the Hawkins case the act of March 3, 1883, relied upon, is quoted as follows in the decision of the court:

> And all officers of the Navy shall be credited with the actual time that they may have served as officers or enlisted men in the Regular or Volunteer Army or Navy, or both, and shall receive all the benefits

of such actual service in all respects in the same manner as if all said service had been continuous and in the Regular Navy *in the lowest grade having graduated pay held by such officers since last entering the service: Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided further, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the Volunteer Army or Navy.*

Commenting upon the same, the court said:

> The claimant contends that this clause is retroactive in its operation, and has the same effect in bestowing benefits on him as if it had been in operation before he entered the regular Navy, and that one of those benefits was to allow him, from the time he was appointed boatswain, a higher rate of pay than, by the Navy pay table, he would be entitled to if his pay were computed from the date of his appointment to that office.
>
> On the other hand, the defendants insist on the well-understood rule that, as a general proposition, every law must be held to be only prospective in its operation, and that no law should be held to be retroactive unless the intent to make it so be clearly manifested by its terms.
>
> Conceding this, we think it manifest on the face of the clause that it was meant to be retroactive, and it is not for the Govern-

ment to object to the character which itself has given to its own legislative grant of benefits to its own officers. It is, we think, quite impossible for the claimant to "receive *all* the benefits * * * in *all* respects" which the clause intends him to receive, if the clause should be held to be prospective only in its operation.

* * * * *

The question then is, whether he is entitled to more pay than he has received; and if so, how much.

The answer to this is connected with the words "shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the regular Navy."

What is meant there by the word *benefits?* We believe there is no difference of opinion that it might fairly be considered to include three things: (1) Higher rank, resulting from greater length of service; (2) earlier period of retirement on the officer's own application after forty years' service, as authorized by section 1443 of the Revised Statutes, and (3) increase of pay.

* * * * *

But, as we have seen, a boatswain's pay is graduated by his length of service after the date of his appointment, increasing with every three years' period of service up to twelve years, after which one more and the final increase of pay takes place.

It is contended that, inasmuch as the law

establishes those grades of pay, and the clause in question does not *expressly* declare that credit for volunteer service shall give title to increased pay, therefore it was not the intention of Congress to authorize any such increase. This provision does not seem to us to be tenable, for several reasons.

1. If it be true, it cuts off all benefits resulting from credit for volunteer service, except the far distant one connected with the officer's retirement, which he may not live long enough to avail himself of. 2. If the clause can fairly be considered to *imply* a right to increased pay, that implication is as much a part of it as what is expressed. (*United States* v. *Babbit*, 1 Black, 55; *Gelpcke* v. *Dubuque*, 1 Wallace, 175.) 3. The second *proviso* of the clause seems to us to justify the implication that the legislature did intend that one of the benefits to result from credit for volunteer service should be increase of pay, at such time and to such extent as the length of that service should be found to authorize. That proviso says:

"Nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the Volunteer Army or Navy."

The presence of this proviso puts its beyond question that Congress had before them, when the clause was pending, the matter of its effect on the question of pay. We are not at liberty to assume that, with that before them, they took note of only

> one aspect of it; but must suppose that they saw it in all its bearings, and intelligently knew what they were doing, and what they were leaving undone. If it was their intention not to allow an officer appointed in the Regular Navy any increase of regular navy pay, on account of volunteer service credited to him, nothing more was needed to effect that object than to strike out of the proviso all after the work "officer." The prohibition would then have been complete, not only as to future service in the Regular Navy, but as to past volunteer service. When, therefore, they limited the proviso to the mere point of forbidding the allowance of additional pay for the time of the volunteer service, it seems to us fairly to indicate their intention that the officer should, in the regular Navy, have whatsoever benefit, in the matter of pay, would legitimately result from giving him credit for his volunteer service. Nothing less than this would, in our judgment, meet and fill the previous words "all the benefits * * * in all respects."

It will thus be seen that the court construed the statute of 1883 to have retrospective action, because in no other wise could compliance be made with its requirements that the persons named should "receive all the benefits * * * in all respects" of being credited with the actual time they may have served as officers or enlisted men in the Volunteer Army or Navy of the United States; and that the correctness of this interpre-

tation was emphasized by the proviso dwelt upon by the court: "Nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the Volunteer Army or Navy," clearly showing that the subject of granting retrospective pay was expressly under consideration at the time that the statute was passed. The analogy which the claimant asserts between the statutes fails also in this: That by the statute of 1883 the retrospective pay which was claimed was essentially pay and not a gratuity, for it resulted from giving to the persons named the benefits of increased longevity by reason of actual service for which they had theretofore received no credit, and not, as contended for in this case, for purely constructive service; and it is worthy of note that the claimant in this case has received the benefit of this statute of 1883 by being credited with his service in the Army, amounting to six years seven months and twenty-one days, previous to his entry into the Navy.

The decisions of this court, in which this statute of 1883 was considered, relied upon by counsel for claimant attempt in no way to modify the reasoning of the Court of Claims in the Hawkins case, and therefore do not, it seems to us, call for any discussion on our part.

It seems to us that the reasoning of Justice Peelle, in announcing the opinion of the majority

of the court below in this case, is eminently logical and just, and that for the reasons thus stated the judgment of the Court of Claims should be affirmed.

LOUIS A. PRADT,
Assistant Attorney-General.

JOHN Q. THOMPSON,
Special Attorney.

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Supreme Court of the United States.

No. 75.—October Term, 1903.

Ulysses S. G. White, Appellant, vs. The United States. } Appeal from the Court of Claims.

[December 21, 1903.]

Mr. Justice Day delivered the opinion of the Court.

This is an appeal from the judgment of the Court of Claims dismissing the petition of the claimant. Upon hearing, that court made the following findings of fact:

"I. The claimant, Ulysses S. G. White, was on the 9th day of January, in the year 1877, appointed a civil engineer in the Navy from civil life. He remained such civil engineer and was such at the time of the passage of the Navy Personnel Act of March 3, 1899.

"II. The claimant, by reason of service in the Army, amounting to six years, seven months and twenty-one days, previous to his entry into the Navy, reached the maximum pay of his grade, $3,500, May 19, 1885, under Revised Statutes, sections 1478, 1556. Thus the amount of pay received by him between the 9th of January, 1877, and the 19th of May, 1885, was as follows:

Three years and 130 days, at $2,700 per annum	$9,061 64
Five years, at $3,000 per annum	15,000 00
Total	$24,061 64

"If he were, upon the date of his appointment, credited for computing his pay with five years' service, and entitled to be paid from that date, he would receive pay at the following rates:

Three years and 130 days, at $3,000 per annum	$10,068 49
Five years, at $3,500 per annum	17,500 00
Total	$27,568 49

or $3,506.85 more than he has previously received."

The claim arises under the act of March 3, 1899, commonly known as the Navy Personnel Act. The act is entitled "Chapter 413. An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States." (30 Stat. 1004.) Section thirteen of the act provides:

"That after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank

in the Army: *Provided*, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty; but this proviston shall not apply to warrant officers commissioned under section twelve of this act: *Provided further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the Army detailed for duty in similar places: *Provided further*, That naval chaplains who do not possess relative rank shall have the rank of lieutenant in the Navy; and that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: *And provided further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law: *And provided further*, That nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the Navy."

The part of the statute particularly under consideration in this case, and upon the interpretation of which the right of the claimant depends, is contained in the third paragraph: "And that all officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service."

It is the contention of the claimant that he comes within the terms of this proviso, and, as an officer appointed to the Navy from civil life, is entitled, as of the date of his appointment, to be credited with five years' service, having been appointed January 1, 1887, and by previous service in the Army entitled, under another statute (22 Stat. L. 473) to a credit of six years, seven months and twenty-one days, reaching the maximum pay of $3,500.00 on May 19, 1885.

The reading of the statute is not altogether clear, and we are to arrive at the meaning of Congress by such aids as may be legitimately resorted to in order to determine the effect and purpose of the lawmaking power in the language used. The statute is part of a voluminous act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States. In the title, the language used looks to the future; it contemplates a readjustment of rank and pay. It is true that the title of the act may not control the plain language of the enacting clauses, but nevertheless we may look to the declared scope and purpose of the act as evidenced by its title whenever it becomes necessary, in view of the use of language, incapable by itself of exact construction. (*Church* v. *United States*, 143 U. S. 457–62.)

Chief Justice Marshall, in *United States* v. *Fisher*, (2 Cranch, 358–386,) said:

"When the intent is plain, nothing is left to construction. When the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice, and will have its due share of consideration." (*Coosaw Mining Co.* v. *United States*, 144 U. S. 563; *Holy Trinity Church* v. *United States*, 143 U. S. 462.)

The part of the statute relied upon by the claimant is incorporated by means of a proviso. Through the diligence of the learned counsel representing the claimant, it is exhibited in the appendix to their brief, that in this statute as originally reported, section 16 of the Navy Personnel Act, (H. R. 10403, 53d Congress, third session,) there was no such proviso. As reported in the Senate, January 1, 1899, the first proviso was added. The other provisos were added as the bill was reported to the Senate, February 2, 1899, and included the one now under consideration; and it is argued that not only does this proviso contain independent matter, but that it was introduced into the bill and intended to be enacted as such. It is undoubtedly true that in Congressional legislation provisos have been included in statutes which are really independent pieces of legislation, but this is a misuse of the usual purpose and effect of a proviso, which is to make exception from the enacting clause, to restrain generality and to prevent misinterpretation. (*Minis* v. *United States*, 15 Pet. 423.) If possible, the act is to be given such construction as will permit both the enacting clause and the proviso to stand and be construed together with a view to carry into effect the whole purpose of the law. (1 Kent, 463.) The purview of the act and the words of the proviso must be reconciled if may be, and the operation of the proviso may be limited by the scope of the enacting clause. The object of interpretation being to ascertain the purpose of the lawmakers as expressed in the terms used in the law, we have a right to look to other laws upon the same subject matter, and to consider the purpose intended to be carried into effect by the operation of the new law considered with the old and as a part of a general provision. It is true that if the language used is free from ambiguity it is the best evidence of the thing intended, and it is the duty of the courts to find, if possible, within the four corners of the act, and from the language used, the scope and meaning of the law. (*Lake County* v. *Rollins*, 130 U. S. 671.) It is equally true that it is the business of courts to decide what the law is, and not by consideration or surmises as to the policy of the Government have the effect to adjudge that to be law which has not been so enacted by the legislature. (*Dewey* v. *United States*, 178 U. S. 521.) But, after all, the main purpose of interpretation is to ascertain and carry into effect the object and purpose of the legislature in making the

given law as expressed in the language used. Where it is claimed that a law is to have a retrospective operation, such must be clearly the intention, evidenced in the law and its purposes, or the court will presume that the lawmaking power is acting for the future only and not for the past; that it is enacting a rule of conduct which shall control the future rights and dealings of men, rather than review and affix new obligations to that which has been done in the past. While it is undoubtedly within the power of Congress to provide for bounties or gratuities to those in the naval or military service of the United States, we should hardly look for such legislation in an act having the declared purpose and scope of the one now under consideration. Retrospective legislation is not favored. (Cooley on Constitutional Limitations, 529.) Retrospective laws which have been sustained in the courts have ordinarily had the effect to remedy irregularities in legal procedure, assessment of property for taxation, and the like. (Cooley on Const. Lim. 530–31.)

But it is urged that the plain meaning of this statute includes officers in the situation of the claimant and requires a readjustment of their pay for years past. The language used is "all officers that have been or may be appointed to the Navy from civil life," and it is claimed that unless this construction is given to the act, violence is done to its terms, and to the rights intended to be conferred upon the claimant and other officers similarly situated. The proviso directs credit on the date of appointment. It is argued that this means as of the date of appointment. If this be true, it is in conflict with the first clause of the act, which makes increased pay begin on June thirtieth. The effect of this construction of the proviso when read with the first clause of the act is thus pertinently pointed out in the majority opinion of the Court of Claims:

"The subject matter of the proviso in question pertains to the rank of chaplains and to the basis for computing the pay of 'all officers, including warrant officers, who have been or may be appointed to the Navy from civil life;' and the purview or body of the section refers to the pay of 'commissioned officers of the line of the Navy and of the Medical and Pay Corps,' many of whom—nearly all from the Medical Corps—were appointed from civil life, while the chaplains, the majority of the professors of mathematics, nearly all the civil engineers, and other officers were appointed from civil life.

"So that the language of the proviso 'all officers . . . who have been or may be appointed to the Navy from civil life' clearly includes those officers mentioned in the body of the section who were appointed from civil life.

"If, therefore, the claimant's contention should prevail, those officers so appointed whose pay was increased after June 30, 1899, by assimilation to Army pay, would, in addition thereto, be entitled to receive from the date of appointment a gratuity of five years' additional pay, thereby fixing in the same section two distinct dates for the beginning of the pay of the same officers."

But quite as important, in our view, is the declared purpose for which the credit is to be given "computing their pay." Does it not do violence to this expression of purpose to give the law a retrospective effect? The purpose for which the five years' service is to be credited cannot be ignored. It is thus that the object of the act is to be accomplished, and it is not declared to be with a view of readjusting the pay of officers within the classes named, or giving to them, as Congress might, a gratuity for past services, but the credit is solely given for the purpose of "computing their pay," and this is to be read in the light of the purview of the statute wherein its operation is declared to be effective from the beginning of the coming fiscal year.

But it is said that the declared policy of the act includes not only those to be hereafter appointed, but also those who have been appointed to the Navy from civil life. It will be presumed that Congress, in passing this legislation, had in mind the law already in force regulating the subject, and we find in section 1556, (Rev. Stat. 267,) that civil engineers in the Navy are to be paid according to the length of their service, with increase of pay through three periods of five years each, and after fifteen years of service they are to receive the maximum amount of pay. If the act under consideration is to be read, as we think it should be, to have reference to the pay of naval officers beginning with the next fiscal year "on and after June thirtieth," it would increase the pay of those who had not reached the maximum pay by continuous service by giving to such officers, for the purpose of computing their pay thereafter, a credit for the five years' service or so much thereof as would enable such officer to reach the maximum pay. This construction gives force to the declared purpose of the act to begin its operation at the beginning of the coming fiscal year and benefits those officers named in the proviso who have not already, by continuous service, been advanced in pay to the maximum compensation fixed by law. Congress must be presumed to have had before it in framing this legislation the statute already in force, fixing the pay of naval officers by advancing them every five years through three such periods to maximum pay. It enacted, in the statute under consideration, that the officers named, appointed or to be appointed from civil life, should have such credit on the date of appointment for one purpose—"computing their pay." In the light of the operation of the act as declared in the first clause to begin on the 30th of June following, we think this was meant, so far as it applied to officers theretofore appointed, and who were not receiving maximum pay, to give them a credit of the term of five years' advancement toward full pay for the purpose of computing compensation after the beginning of the coming fiscal year.

While the question is not free from difficulty, we cannot escape the conclusion that had Congress intended that this credit should be given not

only for the purpose of computing future pay, but with a view to readjusting past compensation, and giving gratuities for years past, it would have declared its purpose in more distinct terms.

The construction here given is consistent with the declared purpose of the act; it gives to the law a future, not a retrospective operation, and, in our judgment, carries out the expressed purpose of Congress in passing the law.

Judgment of the Court of Claims affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.